COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 04-1

Investigation by the Department of Telecommunications and Energy regarding the assignment of interstate pipeline capacity pursuant to <u>Natural Gas Unbundling,</u> D.T.E. 98-32-B (1999).

<u>Initial Comments of The Berkshire Gas Company</u>

March 1, 2004

I. <u>OVERVIEW</u>

In D.T.E. 04-1, issued January 12, 2004 (the "Order"), the Department solicited comments regarding the current competitiveness of the upstream capacity market. The Berkshire Gas Company ("Berkshire" or the "Company") appreciates the opportunity to offer comments on this issue and to assist the Department in evaluating the merits of maintaining the existing mandatory approach to capacity assignment established in D.T.E. 98-32-B at 35,40 (1999). Specifically, the Department sought comments regarding its policies with respect to the assignment of interstate pipeline capacity. Based upon the Department's findings in D.T.E. 98-32-B, the Department has previously noted its intention to conduct a follow-up investigation of whether the market for upstream capacity is "sufficiently competitive" so as to modify the current method for upstream capacity assignment. The Department solicited comments on this question and suggested that comments include, but not be limited to the following: (1) the number of transportation customers; (2) the number of marketers; (3) the percentage of the market that has converted to transportation service (both in volume and the number of customers); (4) developments at the Federal Energy Regulatory Commission ("FERC") regarding this matter; and (5) mechanisms by which the local distribution companies ("LDC's") such as Berkshire can include other affected market participants in an LDC's capacity planning process. Order, p. 4.

As an initial matter, the Company notes that it has long been committed to implementing proactive steps to promote a fully competitive gas market for all customers and has offered transportation service in some capacity since the mid-1990s. To this end, Berkshire has facilitated the transition to a competitive market with a variety of outreach activities directed to both natural gas consumers and natural gas suppliers. In its effort to educate customers about competition and choice, Berkshire has met with hundreds of customers to introduce unbundling and discuss the new options available to all customers. At the time of full unbundling, commercial and industrial customers that previously qualified for transportation service were invited to a special group session to review significant changes to the program, such as the introduction of non-daily metered service. The Company has also incorporated customer choice materials within its “Welcome Package” for new customers, where detailed information and a list of current natural gas marketers is provided.

Berkshire has also sought to facilitate competition through a variety of outreach activities to natural gas suppliers. For example, Berkshire was the first gas utility in the Northeast to establish an electronic data interchange (“EDI”), which allows marketers to electronically request customer information, perform enrollments and receive other pertinent customer data. The electronic communication from AllEnergy describing this important milestone is included as Attachment A.

Berkshire, consistent with Department directive, has sought to coordinate with marketers with respect to all major resource planning activities during the current transition period. Berkshire has advised marketers of its contract renewal and negotiation activities and sought to be sensitive to marketer concerns while planning for the delivery of reliable and economic service for sales customers. Berkshire believes that this level of cooperation has benefited all natural gas consumers and stakeholders.

Berkshire remains committed to the full development of natural gas competition. The Company will continue its efforts to work constructively with customers and marketers to address the questions and concerns associated with customer choice. At the same time, the Company will continue its efforts to develop and implement a least-cost reliable resource plan for the benefit of all customers. In any event, Berkshire's customers benefit from incentive regulation in the form of the Company's Price Cap Mechanism rate plan in areas where full competition is not available. See D.T.E. 98-32-B.

In its order establishing the mandatory approach to capacity assignment, the Department stated that its goal was to "facilitate the expedient and orderly transition from regulation to competition in the gas supply market." See D.T.E. 98-32-B, p. 25. The eventual goal was the establishment of a fully competitive gas market where all customers could purchase both gas commodity and transportation capacity from a wide range of providers all operating in a competitive market. Id. at 7. Berkshire believes that the industry has made significant progress toward this objective. Berkshire, however, believes that the risks identified in D.T.E. 98-32-B remain real and substantial. Accordingly, Berkshire submits that the current structure with respect to capacity assignment should be maintained and then, in approximately three to five years, market conditions should be re-evaluated.

II. REGULATORY BACKGROUND

The Department properly recognized that there were substantial risks in any transition to a workably competitive capacity market. The Department stated its goals to make sure that "customers in general are not made worse" by such transition and that any transition is "orderly, expeditious and minimizes customer confusion." The Department acknowledged in D.T.E. 98-32-B that Massachusetts' gas load is weather sensitive, that pipeline capacity was highly constrained and reliability remained an essential regulatory criterion. Further, the Department stated that in any effort to advance a workably competitive market, "we must ensure (1) that all customers in the Commonwealth will continue to receive reliable service and (2) that customers will be required to pay for only those costs that the LDC incurred in order to serve them." See D.T.E. 98-32-B, p. 25.

A critical issue for the Department to resolve was the treatment of upstream capacity. The Department considered proposals for the treatment of such capacity in the context of then-current market conditions. The Department found that the Massachusetts market indeed was capacity constrained and that there were no meaningful reliability standards for marketers. Thus, the Department was unwilling to "impose this potential reliability risk on the Commonwealth at large." D.T.E. 98-32-B. The Department recognized that certain FERC initiatives might eventually bring the capacity market "closer to full competition," directed gas utilities such as Berkshire to continue to plan for and procure sufficient upstream capacity and determined that a mandatory capacity assignment program subject to specified recall rights was appropriate. The Department also concluded that it would be appropriate to revisit these questions after three years in this "transition" period.

Berkshire believes that the Department's decision in D.T.E. 98-32-B struck an appropriate balance, fostering the development of a more robust and competitive market while protecting customers from the reliability and cost risks of alternative approaches.

III. STATUS OF MARKET

Under the mandatory approach to capacity adopted in D.T.E. 98-32-B, Berkshire has experienced an increase in customer participation since full customer choice was introduced in late 2000. To this end, Berkshire is currently assigning 3,800 Dth per month of capacity to the competitive suppliers serving its customers. Importantly, the mandatory approach to capacity assignment has eliminated any inequitable cost-shifting to those remaining traditional firm sales service customers; that is, the costs of long-term capacity contracts entered into by the Company, and approved by the Department are not inappropriately assigned to non-migrating customers. Despite these advances, the Company's comments demonstrate that the level of competition in the natural gas marketplace has not changed so dramatically in the past three years so as to justify a departure from the Department's well-reasoned conclusion with respect to capacity assignment. Berkshire submits that the Department should acknowledge the extent of progress made to date, avoid further customer confusion and maintain the established and accepted treatment for capacity assignment. Further, the Department should establish a future date, perhaps in three to five years, to again evaluate the status of the natural gas marketplace and the merits of assuming a riskier regulatory policy at that time.

The Company's comments will address the areas requested by the Department. The Company appreciates the opportunity to provide comments on this important matter in these comments and the reply comments due on March 29, 2004.

(1) Provide the number of transportation customers.

As described in the Company's Forecast and Supply Plan ("FSP") filed in docket D.T.E. 02-17 and approved by the Department in early 2003, the Company experienced an initial surge in conversion from default service to transportation service as a result of full customer choice in November 2000. As also described in the FSP, the Company forecasted that changes in transportation activity in the near term would likely be more in the nature of customer "switching" between suppliers rather than converting from sales to transportation service over the forecast period. The Company's transportation forecast was accepted in D.T.E. 02-17. In fact, the Company's recent experience has confirmed the accuracy and validity of this prediction. The following Table 1 provides a summary of Berkshire's transportation customers by rate class in November 2000, November 2001, November 2002 and November 2003 as well as the Company's most recent experience in January 2004. The Company's FSP also noted a trend in 2002 of transportation customer inquiries with respect to returning from transportation to sales services. This trend may also be reflected in Table 1.

The Berkshire Gas Company Summary of Transportation Customers Table 1					
Customer Class	Nov-00	Nov-01	Nov-02	Nov-03	Jan-04
Residential Non-Heat, R1	0	3	1	0	0
Residential Heat, R3	0	10	10	13	13
C&I LLF/Small, G41	0	244	246	198	241
C&I LLF/Medium, G42	54	117	144	125	134
C&I LLF/Large, G43	37	42	42	38	38
C&I HLF/Small, G51	0	101	127	114	151
C&I HLF/Medium, G52	17	78	93	72	73
C&I HLF/Large, G53	25	24	23	23	22
Total	133	619	686	583	672

In sum, the Company's transportation forecast has proven accurate. Some growth in transportation customers was experienced in the immediate aftermath of full "unbundling." There has not, however, been a material change in this area sufficient to support a departure from the Departments' conclusions and policies with respect to capacity assignment.

(2) Provide the number of marketers.

Currently, Berkshire's transportation customers are served by eight natural gas marketers. Additionally, there are occasionally retail agents that contract gas supplies with customers, but are ultimately provided the supply by one of the eight aforementioned natural gas marketers. Berkshire notes that the number of marketers serving its customers has changed from relatively early in the transition period and remained stagnant. Moreover, the identities of these marketers has changed dramatically as a number of marketer failures, reorganizations or consolidations occurred. Berkshire submits that the number of marketers serving its customers and the nature of their activity has not changed so dramatically so as to justify a departure from the Department's established policies.

(3) Provide the percentage of the market that has converted to transportation service (both in volume and the number of customers).

Table 2 provides a summary of the degree of conversion to transportation that has been experienced in the Berkshire service area. Table 2 demonstrated that little conversion activity has been experienced in the residential market. The experience for the commercial and industrial ("C&I") market has been more substantial. Just over 13% of our C&I customers have converted to transportation representing nearly 55% of C&I sendout. This data confirms the Company's actual experience as reflected in its FSP that larger C&I customers have been particularly active in the transportation market. Smaller C&I customers have not been as active in the transportation market and tend to have fewer competitive opportunities. Importantly, the actual experience reflected in Table 2 does not demonstrate a significant change since the issuance of the Department's decision in D.T.E. 98-32-B.

The Berkshire Gas Company Transportation Conversion Percentages Table 2		
	Firm Transportation	Class Percentage
Residential		
Customer count	13	0.04%
2003 Annual Volumes (Dth)	2,032	0.07%
C & I		
Customer count	606	13.29%
2003 Annual Volumes (Dth)	1,788,892	54.64%

*C & I Transportation does not include rate T-54 transportation customers

(4) Please update developments at the FERC.

The Department should consider developments at the FERC or projects subject to FERC review in evaluating the status of the natural gas marketplace. Certainly, the implementation of the requirements of FERC Order 637 has enhanced the efficiency of the gas transportation marketplace and afforded Berkshire greater flexibility in protecting its customer interests in reliable, least-cost service. At the same time, there has been no federal action to establish and enforce reliability criteria for marketers as exists in the electricity industry. This was an important factor to the Department in D.T.E. 98-32-B and the lack of change in this area suggests that the retention of the current capacity assignment policy is appropriate.

Berkshire also notes that the pipeline system remains highly constrained even with the addition of certain pipeline capacity into the region. Berkshire submits that the recent experience of electric generators during periods of extreme cold weather demonstrated this continuing condition for entities that do not maintain firm long-haul capacity entitlements. Berkshire notes that a number of regional pipeline or supply projects are under consideration and may address the capacity constraints experienced by other stakeholders that have not maintained firm long-haul transportation capacity. Table 3 below provides a brief description of some of these projects as of September 2003.

Regional Pipeline and Supply Projects
Table 3

a) Eastchester Expansion – this project was approved by FERC, 12-01 and, is nearing completion. The project serves the Iroquois Gas Transmission System so it will not have a direct impact on Berkshire.

b) M&NE Phase III Expansion - this project was approved by FERC, 12-01 and, is nearing completion. The project serves the Maritimes & Northeast Pipeline/Duke Energy, thus, it will not have a direct impact on Berkshire.

c) HubLine - this project was approved by FERC, 12-01 and, is nearing completion. The project serves Duke Energy/Algonquin Gas Transmission, thus, it will not have a direct impact on Berkshire.

d) Islander East - this project was approved by FERC, 9-02, is pending final permits, and expected to be in service late 2004. The project will serve Duke Energy/Algonquin Gas Transmission/Keyspan Energy Corp., thus, it will not have a direct impact on Berkshire.

e) Millennium Pipeline – this project was filed with FERC in 1997. FERC completed its final review, 9-02, by issuing final orders approving the last portion of the project's route and denying request for rehearing of earlier ruling conditionally authorizing construction and operation. Final permits are pending. The project, expected to be in service in 2004-2005, will serve Columbia Gas Transmission Corp. (a NiSource company)/Transacanada/Westcoast Energy/MCN Energy Group., thus, it will not have a direct impact on Berkshire.

f) Dracut Expansion – this project was approved by FERC, 11-01, and is awaiting supply and market commitment. It is expected to be in service in 2004. The project will replace 12 miles of 16" pipe with 24", within existing right-of-way, Dracut to Burlington, MA and will increase takeaway capacity by 200 Dth/d. Since this project serves El Paso Corp./Tennessee Gas Pipeline Company, it will have a direct impact on Berkshire.

g) Northwinds Pipeline – This project was announced 9-01 and is expected to be in service in 2005-2006. The project will serve TransCanada PipeLines/National Fuel Gas Company so it will not have a direct impact on Berkshire.

h) Northeast ConneXion Project – This project was announced 5-01. Feasibility studies have been completed and discussions with permitting agencies have been positive. FERC Application will be prepared after market commitments have been obtained. The project, anticipated to be in service in 2006, will serve El Paso Corp./Tennessee Gas Pipeline Company, thus, it will have a direct impact on Berkshire.

i) M&NE Phase IV Expansion – This was filed with FERC 2-02 and is expected to be in service 2006. The project serves the Maritimes & Northeast Pipeline/Duke Energy, thus, it will not have a direct impact on Berkshire.

j) Freedom Trail Expansion Project – An open season was announced 7-03. The non-binding open season was completed 8-11-03. The project, anticipated to be in service in November 2006, will serve El Paso Corp./Tennessee Gas Pipeline Company, thus, it will have a direct impact on Berkshire. A non-binding request for capacity was submitted and Berkshire is analyzing the cost and its needs.

k) Blue Atlantic – the project was announced 10-01 and is currently delayed awaiting further developments of Sable Island gas supply. This project is expected to be in service 2008 and will serve El Paso Corp.

In sum, there are several pipeline projects which should benefit the constrained New England gas market during this decade. However, many of the projects do not serve Berkshire which is only supported by the Tennessee Gas Pipeline Company system. Further, many of these projects will not be in place for at least three to five more years. A number of these projects may also be affected by the ongoing concerns with stakeholder credit quality. Thus, the Company suggests that the existing policy of mandatory capacity assignment should remain until, at a minimum, substantial enhancements have been made to the current capacity market. Berkshire notes that its proposal for further review of the status of the market in three to five years would be consistent with the timing of many of these potential projects.

(5) Please describe mechanisms by which the LDC's can include other affected market participants in an LDC's capacity planning process.

Throughout this transition period, Berkshire has continued with its traditional obligation to plan for and procure necessary upstream capacity to serve its firm customers, and has recontracted for capacity as needed, with the Department's approval. In these instances, the Company has communicated by letter with the marketers to inform them of the upcoming contract renewal decisions, and to solicit their input on the issue. Additionally, from time-to-time, the Company has added a note to the "Marketer Information" section of its website under "Pipeline Capacity Entitlement" to communicate upcoming contract changes. An example of these types of communication is included as Attachment B. The Company also seeks to work with other stakeholders when possible. The Department has previously found that "Berkshire [has] complied with Department directive in seeking input from marketers before reaching a decision on which pipeline capacity contracts it should review." D.T.E. 02-17, p. 42.

Berkshire believes that current planning procedures should be retained. Marketers are notified when planning issues are to be addressed by the Company and are afforded the opportunity to comment. Berkshire fully considers these comments as well as the interests of all stakeholders and has been able to implement enhancements to its resource planning process during this transition period. Id. at 42, 44.

IV. CONCLUSION

In conclusion, Berkshire believes that the Department's mandatory approach to capacity has helped to promote a competitive gas supply market in Massachusetts. Numerous customers are enjoying the benefits of greater choice. In addition, this approach has ensured that all customers in the Commonwealth receive reliable service and are required to pay for only those costs incurred in order to serve them. However, as noted in these comments, the Department's concerns with the nature of the market articulated in D.T.E. 98-32-B in support of its decision to implement mandatory capacity assignment have not changed materially. Any change in the Department's approach exposes a wide range of customers to substantial risk in terms of reliability of service and may result in substantial cost subsidies. Thus, based upon our experience, the Company strongly encourages the Department maintain the current mandatory approach to capacity assignment and assess the upstream capacity market again to see if a change is warranted in an additional three to five years.

Attachment A

Attachment B